



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
State Superintendent of Education

Alabama
State Board
of Education

February 5, 2019

Governor Kay Ivey
President

Jackie Zeigler
District I

Tracie West
District II

Stephanie Bell
District III

Yvette M. Richardson, Ed.D.
District IV

Ella B. Bell
District V

Cynthia McCarty, Ph.D.
District VI
Vice President

Jeff Newman
District VII
President Pro Tem

Wayne Reynolds, Ed.D.
District VIII

Eric G. Mackey, Ed.D.
Secretary and
Executive Officer

Mr. Carl Edward Tyler, Jr., Superintendent
Baldwin County Board of Education
2600 North Hand Avenue
Bay Minette, AL 36507

Dr. Matt Akin, Superintendent
Gulf Shores City Board of Education
P. O. Box 3908
Gulf Shores, AL 36547

Dear Mr. Tyler and Dr. Akin:

Last month, on Wednesday, January 16, 2019, I sent a proposed settlement agreement that included my decisions on previously unresolved matters to you in hopes that both Boards would execute a separation agreement in the suggested form. However, I was informed by Mr. Tyler by letter on January 28, 2019, that the County Board would not do so.

Therefore, in order to resolve this matter, please find attached my final and binding decision related to the disputed separation issues between the two respective Boards. I expect your Boards to incorporate the determinations from this document into a final agreement. I believe expedient action will serve the best interests of the public school students in Baldwin County and Gulf Shores.

Please note the deadline provision in my final decision requires your response no later than February 15, 2019.

Sincerely,

A handwritten signature in blue ink that reads "Eric G. Mackey".

Eric G. Mackey
State Superintendent of Education

EGM:LAK

Attachment

FINAL DECISION RELATED TO THE SEPARATION ISSUES BETWEEN THE GULF SHORES CITY BOARD OF EDUCATION AND THE BALDWIN COUNTY BOARD OF EDUCATION

The Baldwin County Board of Education (the “COUNTY BOARD”) exercises general administration and supervision of all public schools lying within Baldwin County, including such public schools lying within the City of Gulf Shores, Alabama (the “City”). On October 9, 2017, in accordance with Ala. Code §§ 16–11–1 *et seq.*, the Gulf Shores City Council established the Gulf Shores City Board of Education (the “CITY BOARD”) and voted to separate from the Baldwin County School System. Although the CITY BOARD and the COUNTY BOARD have attempted to negotiate an agreement pertaining to issues presented and identified by the impending separation, no agreement has been reached by the parties.

Thus, I have rendered a final decision on disputed issues between the COUNTY BOARD and the CITY BOARD in accordance with my authority under Alabama law. The disputed issues on which I have rendered a final, binding decision are as follows:

1. The date that the CITY BOARD shall assume responsibility for the general administration and supervision of Gulf Shores City Schools
2. Student Attendance
3. Personnel
4. The proper distribution of Baldwin County’s Foundation Program allocation for the month of September, 2019
5. The date that the countywide sales and use taxes levied pursuant to Alabama Code § 40–12–4 will begin to be allocated, apportioned, and distributed between the COUNTY BOARD and the CITY BOARD as directed by Alabama Code § 16–13–31(b)

In accordance with the authority granted to the State Superintendent pursuant to Alabama Code § 16-4-4 and other applicable law, and following my thorough review of the issues in dispute, the relevant documentation, and extensive input from both parties, this document memorializes and clarifies what I have concluded to be the immediate and binding determinations necessary to facilitate an implementation plan for the 2019-2020 school year that will ensure the long-term success of both school systems. The decisions rendered herein are based solely on what I have determined to be in the best interest of the students, parents, teachers, and communities involved in the separation.

DEFINITIONS

The following terms and phrases as used in this Decision shall have the following meanings:

Attendance Zones. Attendance zones shall be determined with reference to municipal corporate limits and county boundaries.

Gulf Shores City Schools. Gulf Shores Elementary School, Gulf Shores Middle School, and Gulf Shores High School.

Gulf Shores Students. Those students residing within the corporate limits of the City of Gulf Shores.

County Schools. Those schools under the general administration and supervision of the COUNTY BOARD for the 2018-2019 school year, except Gulf Shores Elementary School, Gulf Shores Middle School, and Gulf Shores High School.

County Students. Students residing in Baldwin County other than Gulf Shores Students.

Students. School-age children eligible to attend grades pre-K-12, including students who are eligible to attend public school until age 21 under applicable state and/or federal law.

Gulf Shores Feeder Pattern. The Feeder Pattern that encompasses Gulf Shores Elementary, Middle, and High Schools as of the 2018-2019 school year.

1. GENERAL ADMINISTRATION AND SUPERVISION OF GULF SHORES CITY SCHOOLS

The CITY BOARD shall assume responsibility for the general personnel, administration, and supervision of Gulf Shores City Schools and the educational interest of the City effective June 1, 2019.

The COUNTY BOARD shall adequately maintain, manage, and operate the Gulf Shores Schools from the date hereof until June 1, 2019, in a manner consistent with the COUNTY BOARD's prior management of the premises. The COUNTY BOARD shall act reasonably and in good faith with the CITY BOARD, its Superintendent, and other City personnel with respect to all reasonable activities undertaken by the CITY BOARD to assume administration and responsibility for Gulf Shores City Schools on June 1, 2019.

Both the COUNTY BOARD and the CITY BOARD shall work together to achieve the transactions ordered in this Decision by June 1, 2019.

2. STUDENT ATTENDANCE

- A. Attendance Zone. The attendance zone for Gulf Shores City Schools shall be the corporate limits of the City.
- B. Gulf Shores Students. All Gulf Shores Students residing in the attendance zone, defined in Section 2.A above, may attend Gulf Shores City Schools.
- C. Out-of-Zone Attendance.

- i. Gulf Shores Students. The CITY BOARD shall provide services for all Gulf Shores Students as of June 1, 2019, except as provided otherwise in this Decision. Gulf Shores Students currently enrolled in various specialized programs may remain in the County System until completion of their public school educational program as stated below.

The COUNTY BOARD shall count those Gulf Shores Students who are currently enrolled in the IB program and who choose to stay enrolled in said program on the COUNTY BOARD's Average Daily Membership Report ("ADM"). The COUNTY BOARD is responsible for determining if these students are transported or not. Once the student discontinues or is otherwise removed from this program, he/she shall forfeit his/her eligibility for this program.

Those Gulf Shores Students who are currently enrolled in the South Baldwin Center for Technology and Aviation Center (career technical school) shall be allowed to attend through graduation. The CITY BOARD will count these students on its ADM; however, the CITY BOARD shall pay the COUNTY BOARD a per-pupil cost per semester for what the COUNTY BOARD expends from local funds on this specialized school. The student count for the program will be made on the 20th day after the beginning of each semester. If these students are currently transported, the CITY BOARD shall assume the responsibility of transporting these students. The COUNTY BOARD shall identify to the CITY BOARD all students in specialized programs in the Gulf Shores Feeder Pattern and their grade levels within seven (7) days after receipt of this Decision.

The Naval JROTC program located at Gulf Shores High School shall remain at Gulf Shores High School after the separation date and all JROTC equipment and related resources shall remain in Gulf Shores High School. County Students currently enrolled in the program may continue to participate in the program; however, transportation shall not be provided by the CITY BOARD. The COUNTY BOARD will count County Students enrolled in the Naval JROTC program on its ADM. Students within the Gulf Shores Feeder Pattern that are not Gulf Shores Students may participate in the Naval JROTC program after the separation date.

The CITY BOARD shall provide a virtual school program for its own students upon separation.

- ii. Students/Children of COUNTY BOARD and CITY BOARD Employees. Excluding students specifically referenced in other sections of this Decision, the CITY BOARD and the COUNTY BOARD shall establish their own policies concerning out-of-zone attendance by students who are children of employees of either the CITY BOARD or the COUNTY BOARD. Neither Board will be required to accept students who reside outside the system's Attendance Zone and who are children of employees of the other Board.
- iii. Interdistrict Transfer Policy ("Board I.T.P"). Nothing in this Decision shall prevent either Board from establishing Interdistrict Transfer Policies (also known as "out-of-district attendance policies").
- iv. Baldwin County Students Currently Residing in the Gulf Shores Feeder Pattern. The immediate removal of certain County Students from Gulf Shores Schools and certain Gulf Shores Students from Baldwin County Schools is not in the best interest of students, families, communities, or the respective school systems, and appropriate measures to ease the transition of students into the respective school zones is needed and will benefit both Boards and the students they serve.

All Eleventh and Twelfth grade students residing in the Gulf Shores Feeder Pattern during the 2019-2021 school years shall attend Gulf Shores High School until their graduation or completion of their public school educational program. Baldwin County Students currently residing in the Gulf Shores Feeder Pattern and who will be a member of the 2019-2020 school year Tenth grade class and who are in compliance with all applicable policies of the COUNTY BOARD and CITY BOARD shall have the choice to attend Gulf Shores City Schools through their graduation or through completion of their public school educational program; provided, however, that such County Students who withdraw, transfer, move out of or no longer reside in the Gulf Shores Feeder Pattern, or who otherwise cease attending Gulf Shores City Schools after the 2019-2020 school year will no longer be eligible to attend Gulf Shores City Schools unless admitted in accordance with and subject to Gulf Shores City Board of Education Policy. Any Baldwin County Students who wish to attend Gulf Shores City Schools who currently reside in the Gulf Shores Feeder Pattern and who will be a member of the 2019-2020 school year Tenth grade class and who are in compliance with all applicable policies of the COUNTY BOARD should have declared their intent to attend either the Baldwin County Schools or Gulf Shores City Schools by February 1, 2019. However, any Student who failed to declare his or her intention as requested shall do so by March 1, 2019, or such Student shall be considered to have elected to remain in Gulf Shores City Schools and shall be counted as such for all State Department

of Education (“SDE”) Fiscal Year 2019-2020 financial calculations related to attendance.

The COUNTY BOARD shall be responsible for transporting the County Students that attend Gulf Shores City Schools pursuant to this section of this Decision. The COUNTY BOARD shall receive state transportation funding referable to said students.

v. Funding Distribution.

For purposes of the Fiscal Year 2019-2020 Foundation Program allocation and all allocations following that distribution formula as prescribed by law, the following assignments shall be utilized based on the enrollment as of the 2018-2019 ADM:

CITY BOARD:

- (a) All Kindergarten through Eighth grade students who reside within the corporate limits of the City of Gulf Shores.
- (b) All current Ninth grade students and/or rising Tenth grade students who choose to remain at Gulf Shores High School.
- (c) All high school students attending Gulf Shores City Schools pursuant to this Decision, no matter their residence.

COUNTY BOARD:

- (a) All Kindergarten through Sixth grade students in Orange Beach Elementary School who do not reside within the corporate limits of the City of Gulf Shores.
- (b) All Seventh and Eighth grade students in Gulf Shores Middle School, but who reside outside the corporate limits of the City of Gulf Shores.
- (c) All current Ninth grade students and/or rising Tenth grade students who choose to attend Orange Beach High School.
- (d) Any other current County Student not affected by this Decision.

For Fiscal Year 2020-2021 and thereafter, calculations shall be made based on prior year attendance in accordance with established State Department of Education practices and policy.

3. PERSONNEL

- A. Employment. Due to the necessary readjustment of student attendance zones, the Gulf Shores City Schools will have reduced teacher units for the 2019-

2020 school year and may need to reduce other school personnel accordingly prior to June 1, 2019. As much as is practicable, teachers and personnel should be given the opportunity to choose whether to continue working in Gulf Shores City Schools or to continue employment with the COUNTY BOARD.

Any teachers or other personnel currently employed in Gulf Shores City Schools who wish to continue employment with the COUNTY BOARD shall request a transfer to another school within Baldwin County subject to COUNTY BOARD policy.

In addition to transfer requests, normal attrition through retirements, resignations, and non-renewals may alleviate some pressure for teacher limits and other personnel. With respect to Gulf Shores Middle and High Schools only, after choice and normal attrition, if there remains a statistical disparity between the pro rata shares assigned to either the CITY BOARD or the COUNTY BOARD, the teachers shall be awarded their school system of choice in order of seniority until the respective pro rata shares are achieved. Seniority shall be defined by total amount of years consecutively employed with the COUNTY BOARD. Any other remaining personnel not contemplated herein shall be treated as addressed above. In the event transfer requests and normal attrition does not rectify the statistical disparity between the pro rata shares of teachers between the two Boards by April 1, 2019, the process for allowing choice by seniority shall begin no later than April 15, 2019.

Any employment contract involving Principals employed as of the date of this Decision shall be honored by the COUNTY BOARD consistent with all the terms and conditions of said contracts. The CITY BOARD shall select and contract with its own Principals.

B. Continuing Service Status. The CITY BOARD shall not jeopardize the continuing service status obtained by any certified teacher or non-probationary classified employee while employed by the COUNTY BOARD because of the assumption of responsibility for Gulf Shores Schools. For the purpose of this section, the time frame for hiring by the CITY BOARD shall be defined as the beginning of the new City School System until June 1, 2019.

C. Terms of Employment.

i. Job Information. The CITY BOARD shall provide job information (salary and benefits) to any employees expressing an interest in being employed by the CITY BOARD. The CITY BOARD salary schedule shall provide salaries at no less than the state minimum salary schedule for the 2019-2020 school year, plus any increases provided by the State. In no instance will the salary rate be less than the existing salary of affected personnel.

- ii. Responsibilities for Salaries. The COUNTY BOARD shall continue to pay salaries and benefits of employees whose contracts are assigned to the CITY BOARD under this Decision for work performed through the end of the 2018-2019 school year.
- D. Itinerant Teachers. Itinerant teachers and support staff who work at both Gulf Shores City Schools and County Schools outside of the City of Gulf Shores through the end of the 2018-2019 school year, and whose contract is not terminated or non-renewed by the COUNTY BOARD, will remain employed by the COUNTY BOARD unless hired by the CITY BOARD.

4. PAYROLL OBLIGATION OF COUNTY BOARD AND CITY BOARD

Both the COUNTY BOARD and the CITY BOARD operate on an October 1st to September 30th fiscal year. Funding for employees at Gulf Shores City Schools is normally provided to the COUNTY BOARD through September 30, 2019. Because the COUNTY BOARD has and will receive all state and federal funds from the SDE for Fiscal Year 2018-2019, the COUNTY BOARD would normally be responsible for funding the payment of salaries and benefits for all state-earned positions and all federal positions assigned to Gulf Shores City Schools for the remainder of the 2018-2019 Fiscal Year. For the month of September 2019, the SDE will divide the Foundation Program allocation to Baldwin County and will apportion and pay over to the CITY BOARD, as the CITY BOARD's share for that month, an amount determined by the SDE with reference to an equivalent number of certified positions based on Fiscal Year 2019-2020 ADM calculations and corresponding funding divisors.

5. LOCAL TAXES AND REVENUES

- A. Countywide Ad Valorem Taxes. Beginning October 1, 2019, the net proceeds of the following ad valorem taxes levied on a countywide basis in Baldwin County shall be allocated, apportioned, and distributed between the COUNTY BOARD and the CITY BOARD as directed by State law (presently, Section 16-13-31(b) of the Code of Alabama of 1975, which provides that the allocation, apportionment, and distribution of countywide taxes shall be on the basis on which Foundation Program moneys are allocated, apportioned, and distributed within the County):
 - i. the countywide ad valorem tax levied pursuant to Section 1 of Amendment No. 3 of the Alabama Constitution, as amended, which is currently being levied and collected at the rate of three (3.0) mills;

- ii. the countywide ad valorem tax levied pursuant to Amendment No. 202 to the Alabama Constitution, which is currently being levied and collected at the rate of one (1.0) mill; and
- iii. the countywide ad valorem tax levied pursuant to Amendment No. 162 of the Alabama Constitution, which is currently being levied and collected at the rate of five (5.0) mills and the proceeds of which are to be used for public school purposes.

B. Countywide Sales and Use Taxes. For sales activities and transactions occurring on or after June 1, 2019, the net proceeds of the privilege, license, and excise taxes (“Sales and Use Taxes”) in Baldwin County exclusively for public school purposes pursuant to Section 40-12-4 of the Code of Alabama 1975 as amended, and the ordinances and resolutions of the County Commission first adopted on December 20, 1988, and is levied at the rate of two percent (2%) shall be allocated, apportioned, and distributed between the COUNTY BOARD and the CITY BOARD as directed by the State law (presently, Section 16-13-31(b) of the Code of Alabama of 1975, which provides that the allocation, apportionment and distribution of countywide taxes shall be on the basis on which Foundation Program moneys are allocated, apportioned, and distributed within the County). On or before June 15, 2019, the SDE will provide instructions with distribution percentages to the appropriate revenue officials in the County for all distributions made hereunder prior to the release of the annual instructions for the Fiscal Year 2019-2020.

C. District Ad Valorem Tax. Beginning October 1, 2019, the net proceeds of the district ad valorem tax levied within the corporate limits of the City of Gulf Shores pursuant to Section 2 of Amendment No. 3 to the Alabama Constitution, which is currently being levied and collected at the rate of three (3.0) mills, shall be apportioned and distributed to the CITY BOARD.

D. Miscellaneous Revenues.

- i. Commencing June 1, 2019, the net revenues from the sale of “Helping Schools” vehicle tags shall be distributed in accordance with the applicable provisions of the Code of Alabama (Section 32-6-300 and Section 32-6-301, which provide that the net proceeds from the sale of such tags be distributed “... to the school district designated by the purchaser, or if the purchaser does not make a designation, to the school district in which the funds were generated, to be used for the purchase of classroom supplies and equipment for grades K through 12 of the public schools in the school district”).
- ii. Commencing June 1, 2019, the net revenues from taxes levied either by the State of Alabama or by Baldwin County on tobacco products, on malt

or brewed beverages and other alcoholic beverages, business license taxes, the proceeds from pari-mutuel betting in the County, and severance taxes shall be apportioned between the COUNTY BOARD and the CITY BOARD on the same basis as the proceeds of the countywide ad valorem taxes are apportioned (that is, on the same basis as Foundation Program funds are allocated, apportioned and distributed).

- iii. Commencing June 1, 2019, the registration fee for manufactured homes shall be distributed as provided in the Code of Alabama (Section 40-12-255).
- iv. Commencing June 1, 2019, the amounts paid to the COUNTY BOARD that are derived from payments made to the County in-lieu-of-taxes shall be apportioned between the COUNTY BOARD and the CITY BOARD on the same basis as Foundation Program funds are allocated, apportioned, and distributed.

In addition to the above determinations that are binding on the COUNTY BOARD and the CITY BOARD by virtue of this Decision, my office has been informed that the parties have resolved certain additional matters, including, but not limited to the following:

- Conveyance of school property, facilities, and other property, including the condition of the subject property at conveyance and risk of loss prior to conveyance
- Pro rata distribution of transportation equipment
- Assumption of debt by the CITY BOARD
- Treatment of local school account fund balances and the child nutrition program account balance
- Responsibility for utility payments prior to the date of separation

To the extent any of the above issues or any additional issues are not fully resolved by the parties, such issues remain within the full legal purview of the State Superintendent of Education as provided by law.

This decision is not intended to have any precedential effect on other city school board separations. To the contrary, each city school board separation presents unique challenges and issues and should be evaluated on a case-by-case basis.

Finally, I find it necessary, and in the best interest of the students, teachers, staff, and parents of both school systems, to prevent needless delay in the implementation of this decision for the 2019-2020 school year. I therefore direct the superintendent for each system to provide my office with a written response to this decision, to be received by my office no later than February 15, 2019, in which each superintendent confirms his acceptance of this decision as final and binding and his commitment to begin implementing this decision immediately. If no written

response confirming compliance is received by that date, this office will understand that lack of response as a refusal to recognize this decision as binding and will proceed accordingly under the enforcement authority granted by Section 16-4-4 of the Alabama Code.

Done this the 5th day of February, 2019.


Eric G. Mackey
State Superintendent of Education